In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 749

GREAT LAKES STEEL CORPORATION, A DELAWARE CORPORATION, APPELLANT

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, ET AL.

MOTION TO DEFER CONSIDERATION OF THE STATEMENT OF JURISDICTION

The Solicitor General, on behalf of the appellee, United States of America, moves that this Court defer consideration as to its jurisdiction of this case until after *United States* v. *Interstate Commerce Commission,* No. 330, October Term, 1948, is decided.

This is a direct appeal from the final judgment, entered on December 22, 1948, of a specially constituted court of three judges established pursuant to the Urgent Deficiencies Act of October 22, 1913, dismissing for lack of jurisdiction appellant's suit to set aside an order of the Interstate Commerce Commission. Appeal was allowed on February 18, 1949, and appeal papers were served on February 28, 1949.

The Commission's order, dated May 28, 1946, dismissed a complaint filed by appellant before the Commission against certain rail carriers seeking repayment of alleged overcharges on certain shipments transported over the lines of certain carriers.

Appellant shipped iron and steel products from points of origin in the East to its fabricating plant at Mansfield, Ohio, where the material was fabricated into Quonset huts. The finished products were then sold to the Navy, and were shipped by the Navy on government bills of lading from Mansfield to naval bases at various destinations.

Appellant claimed that its own inbound shipment of iron and steel materials to Mansfield and the Navy's outbound shipment of Quonset huts from Mansfield should be treated as a single shipment, to which a "transit privilege"[1] should apply under the carriers' tariffs. If the through rate from origin to ultimate destination with transit at Mansfield, Ohio, were accorded to appellant, the charges would have been less than those actually collected by the carriers and plaintiff would have been entitled to pecuniary recovery to the amount of the overcharge. The Commission held that the inbound and outbound shipments were separate transactions; that the

[1] For definition and discussion of the nature of the "transit privilege," see *Board of Trade of Kansas City* v. *United States*, 314 U. S. 534, 537–38; *Central Railroad of New Jersey* v. *United States*, 257 U. S. 247, 257.

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shippers were different; that the rates paid by the Navy Department were "Section 22 quotations or subject to land grant deductions,"[2] these being reduced rates enjoyed only by government traffic; and that appellant, having lost control of the goods at Mansfield, was not entitled to readjustment of the charges on the basis of the through rates, with transit at Mansfield, from the points of origin to the final destination.

In the district court, the United States filed an answer upholding the Commission's order on its merits. The intervening defendants, the Commission and the carriers,[3] filed answers raising the additional defense that the court was without jurisdiction. The court dismissed the action for lack of jurisdiction.

If this Court should hold in No. 330 that judicial review is foreclosed by the doctrine of election of remedies under Section 9 of the Interstate Commerce Act,[3] the judgment here would be cor-

[2] Section 22 quotations are reduced rates to the government accorded under Section 22 of the Interstate Commerce Act, 49 U. S. C. 22. But for the permission contained in this section, such reduced rates would constitute an unlawful discrimination or preference in favor of the shipper receiving the benefit of such reductions. Land grant deductions were for many years available on certain government traffic by reason of the terms under which government lands had been granted for the construction of railroads.

[3] 49 U. S. C. 9. It is there provided:

"That any person or persons claiming to be damaged by any common carrier subject to the provisions of this part may either make complaint to the Commission as hereinafter

rect and should be affirmed on the motions filed heretofore by other appellees. But if the Court should hold that the District Court had jurisdiction in No. 330, the disposition of the instant case may well depend upon the ground of decision in No. 330. In the latter eventuality, the Government would be desirous of making a further statement of its position.

It is therefore suggested that the Court defer consideration as to its jurisdiction of the instant case until after decision of No. 330.

PHILIP B. PERLMAN,
Solicitor General.

APRIL 1949.

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provided for, or may bring suit in his or their own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of this part, in any district or circuit court of the United States of competent jurisdiction; but such person or persons shall not have the right to pursue both of said remedies, and must in each case elect which one of the two methods of procedure herein provided for he or they will adopt."

U. S. GOVERNMENT PRINTING OFFICE: 1949

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